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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1946

No. 62

CHARLES R. MORRIS,

Appellant

vs.

PAUL F. JONES, Director of Insurance of the State of Illinois

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF OF THE SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, AMICUS CURIAE

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This brief *amicus curiae* by the Superintendent of Insurance of the State of New York is respectfully submitted, pursuant to Rule 27, subdivision 9, of the Rules of this Court in support of the application for rehearing herein filed by the appellee, Director of Insurance of the State of Illinois.

Question Presented

Plaintiff sued Chicago Lloyds in Missouri prior to liquidation. The company was placed in liquidation in its domiciliary State, Illinois, and thereafter plaintiff entered a judgment by default in the Missouri action. Plaintiff filed

a proof of claim in the Illinois liquidation proceeding and presented the default judgment as sole proof of his claim. The question presented is whether the default judgment *per se*, entered subsequent to the date of the liquidation order in a sister state, is to be accepted by the liquidator as proof of the claim or whether plaintiff-claimant must prove his claim *de novo* on the merits in the Illinois liquidation proceedings.

Argument

The facts have been sufficiently set forth in the opinion of this Honorable Court handed down on January 20, 1947. We believe that as a matter of law, and in the interests of orderly and uniform liquidation, the decision of the Supreme Court of Illinois, reported in *The People* vs. *Chicago Lloyds*, 391 Ill. 492 (Nov. 19, 1945), should be affirmed.

In the State of New York a similar set of facts distinguished only as hereunder set forth, arose in the *Matter of the Liquidation of National Surety Company*, Claim of William F. Laughlin. The report of the liquidator in disallowing the claim, based upon a default judgment entered against the National Surety Company subsequent to liquidation in the State of Mississippi, was sustained and affirmed by the Supreme Court, New York County (N. Y. L. J., May 29, 1940) by the Appellate Division of the Supreme Court (258 A. D. 789), and by the New York Court of Appeals (283 N. Y. 68). Thereafter, certiorari was denied by this Honorable Court, 311 U. S. 707. We feel, therefore, that the rule of law has been sufficiently laid down to guide the liquidator in New York as to such matters.

The sole distinguishing feature between the *Laughlin* case and the case at bar arises out of the fact that in the National Surety Company proceeding the liquidation order contained a directive dissolving the corporate entity and charter, whereas in the Chicago Lloyds liquidation proceeding, the company being an unincorporated association, there was no provision in the Illinois law for a formal

dissolution and no such clause was incorporated in the liquidation order. Nevertheless, to all intents and purposes, the association was dissolved because its charter was not renewed at its expiration date pursuant to the applicable Illinois law.

In the opinion of Mr. Justice Douglas commenting upon the case of *Pendleton* v. *Russell*, 144 U. S. 640, reference is made to the fact that in the *Pendleton* case (just as in the *National Surety* case in New York), the corporation had been dissolved and "dissolution having operated, like death, as an abatement of the suit", the proof was disallowed. Mr. Justice Douglas stated that no such infirmity appears to be present in the Missouri judgment, and that the Illinois Supreme Court did not hold that the appointment of a liquidator operated as an abatement of the suit. Unfortunately, the opinion of the Illinois Supreme Court was silent as to the question of dissolution of the company and consequent abatement of the Missouri action.

It is not disputed that upon the entry of a liquidation order in the domiciliary state, to-wit, Illinois, title to all assets vest in the domiciliary liquidator. No question is involved herein as to the availability of assets in Missouri to execution and levy following the entry of the judgment there by the plaintiff. We maintain and respectfully submit that orderly administration and equitable distribution of the estate of an insolvent insurance company must be conducted in the domiciliary state under like rules and standards as to all creditors, so that they may be protected alike and without discrimination. To compel the liquidator to hire counsel and incur the expense of defending pending actions in every state of the Union outside of Illinois, following entry of a liquidation order, would, in our opinion, be to encourage waste, permit preferences and compel by necessity the application of different standards and methods of evaluating the claim of one creditor against hundreds of thousands submitted to and determined by the domiciliary liquidator in the home state.

Conclusion

In aid of uniform procedure and uniformity in the treatment of claims of all creditors in insurance liquidation proceedings, we respectfully urge this Honorable Court to grant the petition for rehearing. Upon the rehearing we urge that either the judgment of the court below be affirmed or the matter be remitted to such court so that it may determine as a matter of local Illinois law, the effect upon an unincorporated insurance company of the lapse of its license, the failure to renew the same and the appointment of a liquidator.

Respectfully submitted,

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